United States Environmental Protection Agency
Region 10
1200 Sixth Avenue
Seattle, Washington 98101

Authorization to Discharge under the National Pollutant Discharge Elimination System

In compliance with the provisions of the Clean Water Act, 33 U.S.C. §1251 *et seq*., as amended by the Water Quality Act of 1987, P.L. 100-4, the "Act", owners and operators of concentrated animal feeding operations (CAFOs) in Idaho, except those CAFOs excluded from coverage in Part I of this permit are authorized to discharge in accordance with discharge point(s), effluent limitations, monitoring requirements, and other conditions set forth herein.

This permit shall become effective:

This permit and the authorization to discharge shall expire at midnight:

The permittee shall reapply for a permit reissuance on or before , 180 days before the expiration of this permit if the permittee intends to continue operations and discharges at the facility beyond the term of this permit.

Signed this day of

_____

Michael Bussell, Director
Office of Water and Watersheds

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I. PERMIT AREA AND COVERAGE

A. Permit Area

This permit offers National Pollutant Discharge Elimination System (NPDES) permit coverage for discharges from operations defined as concentrated animal feeding operations (CAFOs) in the State of Idaho, including CAFOs located in Indian Country.

B. Permit Coverage

This permit covers any operation which:

- Meets the definition of a CAFO at 40 CFR 122.23(b)(4),
- Meets the criteria specified in Part I.A of this permit, and
- Discharges or proposes to discharge to Waters of the United States.

A CAFO proposes to discharge if the CAFO is designed, constructed, operated, or maintained such that a discharge will occur.

C. Eligibility for Coverage

Unless excluded from coverage in accordance with Paragraph D or F below, owners/operators of animal feeding operations that are defined as CAFOs, or designated as CAFOs by the permitting authority (See Part VI Definitions, "CAFOs"), are eligible for coverage under this permit. Eligible CAFOs are authorized under the terms and conditions of this permit, and upon the submission of a Notice of Intent (NOI) (see Appendix A) to discharge in accordance with this NPDES general permit.

CAFO owners/operators may also seek to be excluded from coverage under this permit by (1) submitting to EPA (see Part I.I) a notice of termination or (2) by applying for an individual NPDES Permit in accordance with Part I.F.

D. Limitations on Coverage

The following CAFOs are not eligible for coverage under this NPDES general permit, but must apply for an individual permit:

1. CAFOs that have been notified by EPA to apply for an individual NPDES permit in accordance with Part I.F of this permit.

2. CAFOs that have been notified by EPA that they are ineligible for coverage under this general permit due to a past history of non-compliance.

3. Coverage under this permit is available only if the CAFO that discharges, or proposes to discharge, will not adversely affect species that are federally-listed as endangered or threatened ("listed") under the Endangered Species Act (ESA) and will not result in the adverse modification or destruction of habitat that is federally-designated as "critical habitat" under the ESA.

4. Coverage under this permit is available only if the CAFO that discharges, or proposes to discharge, will not have the potential to affect historic properties. CAFO owners/operators must determine whether their permit-related activities have the potential to affect a property that is listed or eligible for listing on the National Register of Historic Places. If the CAFO that discharges, or proposes to discharge, will have an effect on historic properties, the CAFO's owners/operators must consult with the State Historic Preservation Officer (SHPO), Tribal Historic Preservation Officer (THPO), or other tribal representatives regarding measure to mitigate or prevent any adverse effects on historic properties.

5. New dischargers and new sources to water quality impaired waters, listed on the CWA 303(d) list, unless the owner/operator:

    a. Prevents any discharges that contain the pollutant(s) for which the waterbody is impaired and includes documentation of procedures taken to prevent such discharge(s) in the facility's Nutrient Management Plan (NMP), or

    b. Documents that the pollutant(s) for which the waterbody is impaired is not present at the facility and retains documentation of this finding with the NMP, or

    c. In advance of submitting the Notice of Intent (NOI), provides to EPA data to support that the discharges are not expected to cause or contribute to an exceedance of water quality standards and retains such data onsite with the NMP. The operator must provide data and other technical information to EPA sufficient to demonstrate:

        i. For discharges to waters without an EPA approved or established TMDL, that the discharge of the pollutant for which the water is impaired will meet in-stream water quality criteria at the point of discharge to the waterbody, or

        ii. For discharges to waters with an EPA approved or established TMDL, that there are sufficient remaining wasteload allocations in an EPA approved or established TMDL to allow the facility's discharges and existing dischargers to the waterbody are subject to compliance schedules designed to bring the waterbody into attainment with water quality standards.

    EPA shall seek input from the appropriate DEQ regional office to determine if a new discharger or a new source proposing to discharge to an impaired water body will contribute to the existing impairment and whether additional limits or controls are necessary for the discharger to comply with the impaired waters and TMDL provisions specified in Idaho Water Quality Standards.

    Operators are eligible under this section if they receive an affirmative determination from EPA Region 10 that the discharge will not contribute to the existing impairment. The operator must maintain such determination onsite.

6. CAFOs with discharges subject to New Source Performance Standards (NSPS) at 40 CFR 412, unless the facility submits an Environmental Information Document (EID) in accordance with Part I.E.8.

E. Application for Coverage

1. Owners/operators of CAFOs seeking to be covered by this permit must submit an NOI (see Appendix A) and a NMP that meets the requirements of Part III.A of this permit.

2. Any owner/operator of a CAFO covered by the 1997 Idaho CAFO General Permit and any owner/operator of a CAFO that has submitted an NOI or an application for coverage by an individual permit prior to the issuance of this general permit must submit a new updated NOI to EPA within 90 days of the effective date of this permit.

3. CAFO owners/operators not covered under Part E.2 above may submit an NOI at any time. Regardless of when the NOI is submitted, the CAFO's authorization is only for discharges that occur after permit coverage is granted. The permitting authority reserves the right to take appropriate enforcement actions for any unpermitted discharges.

4. Contents of the NOI: The NOI submitted for coverage under this permit must include the following information:

    a. Name of the owner or operator;

    b. Facility location and mailing addresses;

    c. Latitude and longitude of the production area (entrance to production area);

    d. Topographic map of the geographic area in which the CAFO is located showing the specific locations of the production area, land application area, all domestic and irrigation wells, and the name and location of the nearest surface waters;

    e. A diagram of the production area;

    f. Number and type of animals, whether in open confinement or housed under roof (beef cattle, broilers, layers, swine weighing 55 pounds or more, swine weighing less than 55 pounds, mature dairy cows, dairy heifers, veal calves, sheep and lambs, horses, ducks, turkeys, other);

    g. Type of containment and storage (anaerobic lagoon, roofed storage shed, storage ponds, under floor pits, above ground storage tanks, below ground storage tanks, concrete pad, impervious soil pad, other) and total capacity for manure, litter, and process wastewater storage (tons/gallons);

    h. Total number of acres under control of the applicant available for land application of manure, litter, or process wastewater;

    i. Estimated amounts of manure, litter, and process wastewater generated per year (tons/gallons); and

    j. Estimated amounts of manure, litter, and process wastewater transferred to other persons per year (tons/gallons).

5. Signature Requirements: The NOI must be signed by the owner/operator or other authorized person in accordance with Part V.C.5 of this permit.

6. Where to Submit: Signed copies of the NOI or individual permit application must be sent to:

United States Environmental Protection Agency, Region 10
Unit Manager, NPDES Permits Unit
1200 Sixth Avenue, Suite 900 OWW-130
Seattle, WA 98101

Copies of the NOI or individual permit applications shall also be sent to the Idaho State Department of Agriculture (ISDA), the Idaho Department of Environmental Quality (DEQ) state office, and the appropriate DEQ regional offices at:

Idaho State Department of Agriculture
2270 Old Penitentiary Road
P.O. Box 790
Boise, ID 83701

Idaho Department of Environmental Quality
Water Quality Division
DEQ State Office
1410 N. Hilton
Boise, Idaho 83706

DEQ Boise Regional Office Regional Office 1445 N. Orchard Boise, ID 83706	Counties:	Ada Adams Boise Canyon Elmore	Gem Owyhee Payette Valley Washington
DEQ Coeur d'Alene Regional Office 2110 Ironwood Parkway Coeur d'Alene, ID 83814	Counties:	Benewah Bonner Boundary	Kootenai Shoshone
DEQ Idaho Falls Regional Office 900 N. Skyline, Suite B Idaho Falls, ID 83402	Counties:	Bonneville Butte Clark Custer Fremont	Jefferson Lemhi Madison Teton
DEQ Lewiston Regional Office 1118 "F" Street Lewiston, ID 83501	Counties:	Clearwater Idaho Latah	Lewis Nez Perce
DEQ Pocatello	Counties:	Bannock	Franklin

Regional Office		Bear Lake	Oneida
444 Hospital Way #300		Bingham	Power
Pocatello, ID 83201		Caribou	
DEQ Twin Falls	Counties:	Blaine	Jerome
Regional Office		Camas	Lincoln
1363 Fillmore St.		Cassia	Minidoka
Twin Falls, ID 83301		Gooding	Twin Falls

If the CAFO is located in Indian Country lands or discharges into Tribal waters, the CAFO must send a copy of the NOI or applications for an individual permit to the Tribal Headquarters of the appropriate tribal authority at:

Coeur d'Alene		
Mr. Chief J. Allan, Chairman	cc.	Scott Fields
Coeur d'Alene Tribal Council		Water Resource Manager
850 A. St. P.O. Box 408		
Plummer, ID 83851-9703		
Shoshone-Paiute		
Mr. Robert C. Bear	cc.	Heather Lawrence
P.O. Box 219		Environmental Director
Owyhee, NV 89832		
Kootenai		
Ms. Jennifer Porter, Chairwoman	cc.	Kevin Greenleaf
Kootenai Tribal Council		Environmental Director
P.O. Box 1269		
Bonners Ferry, ID 83805		
Nez Perce		
Mr. Samuel N. Penney, Chairman	cc.	Jenifer Harris
Nez Perce Tribe of Idaho		Water Quality Specialist
P.O. Box 305		
Lapwai, ID 83540		
Shoshone-Bannock		
Alonzo A. Coby, Chairman	cc.	Elese Teton
Shoshone-Bannock Tribes of Fort Hall		Water Engineer
Business Council		
P.O. Box 306		
Fort Hall, ID 83203		

7. Upon receipt, EPA will review the NOI and NMP to ensure that the NOI and NMP are complete. EPA may request additional information from the CAFO owner or operator if additional information is necessary to complete the NOI and NMP or to clarify, modify, or supplement previously submitted material. If EPA makes a preliminary determination that the NOI is complete, the NOI, NMP, and draft terms of the NMP to be incorporated into the permit will be made available for a thirty (30) day public

review and comment period. The process for submitting public comments and requests of hearing will follow the procedures applicable to draft permits as specified by 40 CFR 124.11 through 124.13. EPA will respond to comments received during the comment period as specified in 40 CFR 124.17 and, if necessary, require the CAFO owner or operator to revise the NMP in order to be granted permit coverage. If determined appropriate by EPA, CAFOs will be granted coverage under this general permit upon written notification by EPA.

8. For new sources, the National Environmental Policy Act (NEPA) requires EPA to conduct an environmental review pursuant to the Council on Environmental Quality (CEQ) regulations at 40 CFR Parts 1500-1508 and EPA's NEPA implementing regulations at 40 CFR Part 6. NEPA requirements must be complied with prior to allowing permit coverage of new sources (i.e. Large CAFOs whose construction began after April 14, 2003). New sources seeking permit coverage must submit an Environmental Information Document (EID) or Draft Environmental Assessment (EA) along with their NOI and NMP (40 CFR 6.200(g)(2) and 40 CFR Part 6, Subpart C). Information concerning preparation of an EID or EA can be obtained by contacting Jamey Stoddard of the EPA, Region 10, NPDES Permits Unit, at (206) 553-6110.

   These NEPA and NOI requirements also apply to expansions of existing CAFOs that meet the definition of a new source at 40 CFR 122.2 and the new source criteria at 40 CFR 122.29(a) and (b). In order to determine if an expansion is a new source, the applicant must submit to EPA information describing the expansion and a map showing the location of the expansion. If EPA determines the expansion meets the new source definition, the owner/operator must prepare and submit an EID or draft EA as described above. The information must be submitted to:

   United States Environmental Protection Agency, Region 10
   Unit Manager, NPDES Permits Unit
   1200 Sixth Avenue, Suite 900 OWW-130
   Seattle, WA 98101

F. Requirements for an Individual NPDES Permit

1. EPA may at any time require any facility authorized by this permit to apply for, and obtain, an individual NPDES permit pursuant to 40 CFR § 122.28. EPA will notify the operator, in writing, that an application for an individual permit is required and will set a time for submission of the application. Coverage of the facility under this general NPDES permit is automatically terminated when: (1) the operator fails to submit the required individual NPDES permit application within the defined time frame; or (2) the individual NPDES permit is issued by EPA.

2. Any owner/operator covered under this permit may request to be excluded from the coverage of this permit by applying for an individual permit pursuant to 40 CFR § 122.28. The owner/operator shall submit an application for an individual permit (Form 1 and Form 2B) with the reasons supporting the application to EPA. If a final, individual NPDES permit is issued to an owner/operator otherwise subject to this general permit, the applicability of this NPDES CAFO general permit to the facility is automatically terminated on the effective date of the individual NPDES permit. Otherwise, the applicability of this general permit to the facility remains in full force and effect (for example, if an individual NPDES permit is denied to an owner/operator otherwise subject to this general permit).

G. Permit Expiration

This permit will expire five (5) years from the effective date. The permittee must re-apply for permit coverage 180 days prior to the expiration of this permit unless the permit has been terminated consistent with § 122.64(b) or the CAFO will not discharge or propose to discharge upon expiration of the permit. If this permit is not reissued or replaced prior to the expiration date the permit will be administratively continued and remain in force and effect. Any permittee who has submitted an NOI 180 days prior to the expiration date of the permit and has been granted permit coverage will automatically remain covered by the administratively continued permit until the earlier of:

1. Reissuance or replacement of this permit, at which time the permittee must comply with the Notice of Intent conditions of the new permit to maintain authorization to discharge;

2. Issuance of an individual permit for the discharges;

3. A formal decision by the permitting authority not to reissue this general permit, at which time you must seek coverage under an individual permit; or

4. The permitting authority grants the permittee's request for termination of permit coverage.

H. Change in Ownership

If a change in the ownership of a facility whose discharge is authorized under this permit occurs, the permittee shall submit a notice of termination to EPA. If the new owner/operator seeks coverage under this permit, the new owner/operator shall complete and submit an NOI in accordance with Part I.E. The new owner/operator is not required to submit the NMP to EPA, provided that the following signed statement is included with the NOI:

> "I certify under penalty of law that I am the owner or operator of a concentrated animal feeding operation (CAFO), identified as [Name of CAFO], which was previously covered under [previous NPDES Permit Number]. I have reviewed the previous EPA approved NMP and certify under penalty of law that I will implement said NMP without modification."

This statement must be signed in accordance with Part V.C.5 of the permit. EPA will notify the proposed new permittee if change of ownership without NMP review is granted. If the new owner/operator proposes to modify any part of the NMP, the NMP shall be submitted to EPA in accordance with Part I.E, and will be subject to the EPA review and public comment procedures described in Part I.E.7.

I. Termination of Permit Coverage

1. Coverage under this permit may be terminated in accordance with 40 CFR Part 122.64 and if EPA determines in writing that:

   a. The facility has ceased all operations and all waste retention structures have been properly closed in accordance with the April, 2006 Idaho Natural Resources Conservation Service (NRCS) Conservation Practice Standard No. 360, Closure of Waste Impoundments (see Appendix D); and

   b. The facility is no longer a CAFO that discharges or proposes to discharge manure, litter, or process waste water to waters of the United States; and

c. In accordance with 40 CFR 122.64, the entire discharge is permanently terminated by elimination of the flow or by connection to a publicly owned treatment works (POTW).

2. Requests to terminate coverage under this permit must be made in writing and submitted to EPA at the following address:

United States Environmental Protection Agency, Region 10
Unit Manager, NPDES Permits Unit
1200 Sixth Avenue, Suite 900 OWW-130
Seattle, WA 98101

3. Termination of coverage will become effective 30 days after the written notice is sent by EPA, unless the permittee objects within that time.

II. EFFLUENT LIMITATIONS AND STANDARDS

A. Effluent Limitations and Standards Applicable to the Production Area

There must be no discharge of manure, litter, or process wastewater pollutants into waters of the United States from the production area except as provided below.

1. Whenever precipitation causes an overflow of manure, litter, or process wastewater, pollutants in the overflow may be discharged into waters of the United States provided:

a. The production area is properly designed, constructed, operated, and maintained to contain all manure, litter, process wastewater, and the runoff and direct precipitation from the 25-year, 24-hour storm event for the location of the CAFO.

b. The design storage volume is adequate to contain all manure, litter, and process waste water accumulated during the storage period including, at a minimum, the following:

i. The normal precipitation less evaporation during the storage period;

ii. The normal runoff during the storage period;

iii. The direct precipitation from a 25-year, 24-hour storm event;

iv. The runoff from the 25-year, 24-hour storm even from the production area;

v. The residual solids after liquid has been removed;

vi The necessary freeboard to maintain structural integrity; and

vii. In the case of treatment lagoons, the necessary minimum treatment volume.

2. The production area must be operated in accordance with the additional measures and records specific in Part II.A.3 of this permit.

3. Additional Requirements

In addition to meeting the requirements in Part II.A.1 of this permit, the permittee must implement the following additional measures.

a. Weekly visual inspections of all storm water diversion devices, runoff diversion structures, and devices channeling contaminated storm water to the wastewater and manure storage and containment structures.

b. Daily visual inspections of all water lines, including drinking water and cooling water lines.

c. Install a depth marker in all open surface liquid impoundments. The depth marker must clearly indicate the minimum capacity necessary to contain the runoff and direct precipitation of the 25-year, 24-hour rainfall event.

d. Weekly inspections of the manure, litter, and process wastewater impoundments noting the level as indicated by the depth marker.

e. Timely correction of any deficiencies that are identified in daily and weekly inspections.

f. Properly dispose of animal mortalities in accordance with the August, 2006 Idaho NRCS, Conservation Practice Standard Code 316 (see Appendix B). Animal mortalities must not be disposed of in any liquid manure or process wastewater systems. Animal mortalities must be handled as to prevent discharge of pollutants to waters of the United States.

g. The maintenance of complete on-site records documenting implementation of all required additional measures for a period of five years, including the records specified for Operation and Maintenance in Parts IV and Part V.B.5.

h. CAFOs constructing new wastewater retention facilities or modifying existing retention facilities shall insure that all retention structure design and construction will, at a minimum, be in accordance with the technical standards developed by the Idaho NRCS. The permittee must use those standards that are most current at the time of construction. Existing retention facilities that have been properly maintained and show no signs of structural breakage will be considered to be properly constructed.

i. A rain gauge shall be kept on site and properly maintained. A log of all measurable rainfall events shall be kept with the NMP.

j. Open lots and associated wastes shall be isolated, as appropriate, from run-on from outside surface drainage by ditches, dikes, berms, terraces, or other such structures designed to carry peak flows expected at times when a 25-year, 24-hour rainfall event occurs. Clean water and flood waters must be diverted, as appropriate, from contact with feedlots and holding pens, and manure and/or process wastewater storage systems. In cases where it is not feasible to divert clean water from the production area, the retention structures shall include adequate storage capacity for the additional clean water. Clean water includes rain falling on the roofs of facilities, runoff from adjacent land, or other sources.

k. Facilities shall not expand operations, either in size or numbers of animals, prior to amending or enlarging the waste handling procedures and structures to accommodate any additional wastes that will be generated by the expanded operations.

4. Other Requirements/Prohibitions Applicable to Production Areas

a. All discharges to wastewater retention facilities shall be composed entirely of manure, litter, or process wastewater from the proper operation and maintenance of the CAFO, and the precipitation from the animal confinement, storage, and handling areas. The disposal of other materials into these wastewater retention facilities is prohibited.

b. Animals confined at existing CAFOs shall not be allowed to come into direct contact with waters of the United States.

c. New CAFOs shall not be built in a water of the United States as defined in 40 CFR 122.2 and animals confined at the CAFO shall not be allowed to come into direct contact with waters of the United States.

d. There shall be no water quality impairment to public and neighboring private drinking water wells due to waste handling at the permitted facility. CAFO wastewater retention facilities, holding pens, or waste/wastewater disposal sites shall not be located closer to public or private water wells than the distances specified by State, Tribal, or local regulations or health codes, or State, Tribal, or local issued permits for that facility.

e. There shall be no discharge of manure, litter, or process wastewater from retention or control structures to surface waters of the United States through groundwater with a direct hydrologic connection to such waters.

f. There shall be no discharge of rainfall runoff from manure, litter, or feed storage piles to waters of the United States.

5. Discharges to Water Quality Impaired Waters

a. If the CAFO discharges, or proposes to discharge, to an impaired water with an EPA approved or established TMDL, EPA will inform the facility if any additional limits or controls are necessary for the discharge to be consistent with the assumptions of any available wasteload allocation in the TMDL, or if coverage under an individual permit is necessary in accordance with Part I.D.1. Any additional limits or controls shall be included in the facility's NMP.

b. If the CAFO discharges, or proposes to discharge, to an impaired water without an EPA approved or established TMDL, EPA will inform the facility if any additional limits or controls are necessary to meet water quality standards, or if coverage under an individual permit is necessary in accordance with Part I.D.1. Any additional limits or controls shall be included in the facility's NMP.

c. If a CAFO's authorization for coverage under this permit relied on Part I.D.5 for a new discharge to an impaired water, the facility must implement and maintain any control measures or

conditions on its site that enabled the CAFO to become eligible under Part I.D.5, and shall include these control measures or conditions in the facility's NMP.

d. If at any time the facility becomes aware, or EPA determines, that a discharge to an impaired water has occurred or is proposed to occur and the requirements of Part II.A.5.a-c have not been addressed, the facility must take corrective action to fulfill the requirements of Part II.A.5.a-c. Any changes to the NMP required to fulfill the requirements of Part II.A.5.a-c shall be done in accordance with Part III.A.6.

6. Antidegradation Requirements for New or Increased Dischargers

The permittee is not authorized to discharge manure, litter, or process wastewater that does not comply with Idaho's anti-degradation policy for water quality standards. Idaho's anti-degradation policy, IDAPA 58.01.02.051, can be obtained from the DEQ at the address listed in Part I.E.6.

B. Effluent Limitations and Standards Applicable to the Land Application Area

1. For CAFOs where manure, litter, or process wastewater is applied to land under the control of the CAFO owner/operator, the NMP required by Part III of this permit must include the following requirements:

a. Nutrient transport potential. The NMP must incorporate elements in paragraphs c – h below based on a field-specific assessment of the potential for nitrogen and phosphorus transport from the field.

b. Form, source, amount, timing, and method of application. The NMP must address the form, source, amount, timing, and method of application of nutrients on each field to achieve realistic production goals, while minimizing nitrogen and phosphorus movement to surface waters.

c. Determination of application rates. Application rates for manure, litter, or process wastewater must minimize phosphorus and nitrogen transport from the field to surface waters in compliance with the June, 2007 Idaho NRCS, Conservation Practice Standard Code 590 (see Appendix C).

d. Site specific conservation practices. Identify appropriate site specific conservation practices to be implemented, including as appropriate buffers or equivalent practices, to control runoff of pollutants to waters of the United States.

e. Protocols to land apply manure, litter or process wastewater. Establish protocols to land apply manure, litter or process wastewater in accordance with site specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter or process wastewater.

f. Manure and soil sampling. Manure must be analyzed at least once annually for nitrogen and phosphorus content. Soil must be analyzed annually for phosphorus content. The results of these analyses must be used in determining application rates for manure, litter, and process wastewater;

g. Inspection of land application equipment for leaks. Equipment used for land application of manure, litter, or process wastewater must be inspected periodically for leaks;

h. Land application setback requirements. Manure, litter, or process wastewater must not be applied closer than 100 feet to any down-gradient water of the United States, open tile line intake structures, sinkholes, agricultural well heads, or other conduits to waters of the United States. The permittee may elect to use a 35-foot vegetated buffer where applications of manure, litter, or process wastewater are prohibited as an alternative to the 100-foot setback to meet this requirement. As an alternative, the permittee may demonstrate to the permitting authority that the use of an alternative practice will result in equivalent or better pollutant reductions than would be achieved by the use of the 100-foot setback.

i. Complete on-site records shall be included with the site specific NMP and must be maintained to document implementation of all required land application practices. Such documentation must include the records specified for Soil and Manure/Wastewater Nutrient Analyses and Land Application in Part IV.A, Table IV-A.

2. Additional BMPs to control discharges from land application areas

a. Areas shall be identified that, due to topography, activities, or other factors, have a high potential for soil erosion. Where these areas have the potential to contribute pollutants to waters of the United States, the facility shall identify measures to limit erosion and pollutant runoff.

b. Irrigation Control: Irrigations systems shall be managed in accordance with the April, 2006 Idaho NRCS Conservation Practice Standard 449: Irrigation Water Management (see Appendix E), so as to minimize the ponding or puddling of wastewater on land application fields, the contamination of ground and surface water, and the occurrence of nuisance conditions such as odor and flies.

3. Prohibitions.

a. There shall be no discharge of manure, litter, or process wastewater to a water of the United States from a CAFO as a result of the application of manure, litter or process wastewater to land areas under the control of the CAFO, except where it is an agricultural storm water discharge. Where manure, litter, or process wastewater has been applied in accordance with the CAFO's site specific NMP, a precipitation related discharge of manure, litter, or process wastewater from land areas under the control of the CAFO is considered to be an agricultural storm water discharge.

b. Wastes shall not be land applied during precipitation events or when the ground is saturated with water. Winter application of solid wastes shall be in accordance with the June, 2007 Idaho NRCS, Conservation Practice Standard Code 590 (see Appendix C).

4. There shall be no dry weather discharges from land application sites.

C. Other Limitations

1. Process wastewater discharges from outside the production area, including: wash down of equipment that has been in contact with manure, raw materials, products or byproducts that occurs outside of the production area; runoff of pollutants from raw materials, products or byproducts (such as manure, feathers, litter, bedding and feed) from the CAFO that have been spilled or otherwise deposited outside the production area that have the potential to discharge to, or contribute pollutants to waters of the United

States, shall be identified in the NMP. The NMP shall identify measures necessary to meet applicable water quality standards.

2. Discharges that do not meet the definition of process wastewater, including: discharges associated with feed, fuel, chemical, or oil spills, equipment repair, and equipment cleaning where the equipment has not been in contact with manure, raw materials, products or byproducts; domestic wastewater discharges that have the potential to discharge to, or contribute pollutants to waters of the United States, shall be identified in the NMP. The NMP shall identify measures necessary to meet applicable water quality standards.

3. Storm water discharges that are not addressed under the effluent limitations in Part II above remain subject to applicable industrial or construction storm water discharge requirements.

III. SPECIAL CONDITIONS

A. Nutrient Management Plan

The permittee shall develop, submit, and implement a site specific NMP. The NMP shall specifically identify and describe practices that will be implemented to assure compliance with the effluent limitations and special conditions of this permit (Parts II and III). The NMP must be developed in accordance with the June, 2007 Idaho NRCS, Conservation Practice Standard Code 590 (see Appendix C).

1. Schedule. The completed NMP must be submitted to EPA with a NOI for CAFOs seeking coverage under this permit. The permittee shall implement its NMP upon authorization under this permit.

2. NMP Review and Terms.

   a. Upon receipt of the NMP, EPA will review the NMP. If additional information is necessary to complete the NMP, or to clarify, modify, or supplement previously submitted material, EPA may request such information from the CAFO owner or operator.

   b. The NMP will be used by EPA to identify site specific permit terms, to include the items outlined in Part III.A.3, to be incorporated into this permit. EPA will identify site specific permit terms with respect to protocols for the land application of manure, litter, and process wastewater. EPA will also identify site specific permit terms with respect to manure, litter, and process wastewater storage capacities and site specific conservation practices based on the CAFO's NMP to the extent that such terms are necessary to support the application rates expressed in the NMP.

   c. When EPA determines that the NMP and NOI are complete, EPA will notify the public of EPA's proposal to grant coverage under the permit and make available for public review and comment the notice of intent submitted by the CAFO, including the CAFO's NMP, and EPA will identify the terms of the NMP to be incorporated into the permit. EPA will provide the opportunity for public notice by publishing the CAFO's NOI, NMP, and terms of NMP to be incorporated into the permit on EPA Region 10's public comment internet site at (http://yosemite.epa.gov/r10/HOMEPAGE.NSF/Information/R10PN). The process for public comments, hearing requests and the hearing process if a hearing is held will follow the procedures set forth in 40 CFR 124.11 through 124.13.

d. The period of time for the public to comment and request a hearing on the proposed terms of the NMP to be incorporated into the permit shall be thirty (30) days.

e. EPA will respond to comments received during the comment period, as provided in 40 CFR 124.17, and, if necessary, require the CAFO owner or operator to revise the NMP in order to be granted permit coverage.

f. When EPA authorizes the CAFO owner or operator to discharge under this general permit, the terms of the NMP shall be incorporated as terms and conditions of the permit for the CAFO. EPA will notify the CAFO owner or operator that coverage has been authorized and of the applicable terms and conditions of the permit. These site specific permit terms will be provided to the permittee in a permit authorization letter

g. Each CAFO covered by this permit must comply with the site specific permit terms established by EPA based on the CAFO's site specific NMP.

3. NMP Content. The site specific NMP at a minimum must include practices and procedures necessary to implement the applicable effluent limitations and standards. In addition, the NMP and each CAFO covered by this permit must, as applicable:

a. Ensure adequate storage of manure, litter, and process wastewater, including procedures to ensure proper operation and maintenance of the storage facilities. All wastewater and manure containment structures shall at a minimum be designed, constructed, operated, and maintained in accordance with the standards of the *Natural Resources Conservation Service, Field Office Technical Guide*. Storage capacity must be sufficient to meet the minimum applicable state requirements specified in Part II.A.1 of this permit and also must be sufficient to allow the CAFO to comply with the land application schedule specified in the NMP. To the extent that the NMP depends on off-site transport or other means of handling to ensure adequate storage capacity this must be described in the NMP.

If the CAFO needs to maintain storage capacity that exceeds the minimum capacity requirements of Part II.A.1 of this permit to comply with the land application provisions of the NMP, the storage capacity shall become a term of this permit and site specific terms are to be developed by EPA based upon the submitted NMP.

b. Ensure proper management of mortalities (i.e. dead animals) to ensure that they are not disposed of in a liquid manure, storm water, or process wastewater storage or treatment system that is not specifically designed to treat animal mortalities. Mortalities shall be handled in such a way as to prevent the discharge of pollutants to waters of the United States. Mortality handling practices shall be in accordance with all applicable State and local regulatory requirements, including: August, 2006 Idaho NRCS, Conservation Practice Standard Code 316 (see Appendix B).

c. Ensure that clean water is diverted, as appropriate, from the production area. Any clean water that is not diverted and comes into contact with raw materials, products, or byproducts including manure, litter, process wastewater, feed, milk, eggs, or bedding is subject to the effluent limitations specified in Part II.A of this permit. Where clean water is not diverted from the production area, the retention structures shall include adequate storage capacity for the additional

clean water. Clean water includes, but is not limited to, rain falling on the roofs of facilities and runoff from adjacent land.

d. Prevent the direct contact of animals confined or stabled at the facility with waters of the United States.

e. Ensure that chemicals and other contaminants handled on-site are not disposed of in any manure, litter, process wastewater, or storm water storage or treatment system unless specifically designed to treat such chemicals or contaminants. All wastes from dipping vats, pest and parasite control units, and other facilities utilized for the management of potentially hazardous or toxic chemicals shall be handled and disposed of in a manner sufficient to prevent pollutants from entering the manure, litter, or process wastewater retention structures or waters of the United States. The NMP shall include references to any applicable chemical handling protocols.

f. Identify appropriate site specific conservation practices to be implemented, including as appropriate buffers or equivalent practices, to control runoff of pollutants to waters of the United States and specifically, to minimize the runoff of nitrogen and phosphorus. These practices may include, but are not limited to, residue management, conservation crop rotation, grassed waterways, strip cropping, vegetated buffers, riparian buffers, setbacks, terracing, and diversions. At a minimum, such practices must be adequate to keep erosion levels in each field at or less than the soil loss tolerance (T) value specified in the *Natural Resources Conservation Service, Field Office Technical Guide.*

g. Identify protocols for appropriate testing of manure, litter, process wastewater, and soil. Manure, wastewater and soil sampling must be conducted in accordance with the June, 2007 Idaho NRCS, Conservation Practice Standard Code 590 (see Appendix C).

h. Establish protocols to land apply manure, litter, or process wastewater in accordance with site specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter, or process wastewater.

The permittee's site specific NMP shall document the calculation of land application rates of manure, litter, or process wastewater. The June, 2007 Idaho NRCS, Conservation Practice Standard Code 590 (see Appendix C) shall be used for calculating these rates. The rate calculation shall address the form, source, amount, timing, and method of application on each field to achieve realistic production goals while minimizing nitrogen and phosphorus movement to surface water. The rate calculation shall be based on the results of a field specific assessment of the potential for nitrogen and phosphorus transport from the field to surface waters using the June, 2007 Idaho NRCS, Conservation Practice Standard Code 590 (see Appendix C).

The permittee shall comply with site specific permit terms established by EPA for land application of manure, litter, and process wastewater. Development of site specific terms will be based upon EPA's review of the NMP submitted in accordance with the requirements of Parts I.E and III.A of this permit. The NMP must also include any information necessary to assess the adequacy of the application rates included in the NMP.

i. Application rates may be expressed in NMPs consistent with one of the two approaches described in paragraphs i and ii below.

i. Linear Approach

(A) The Linear Approach expresses rates of application as pounds of nitrogen and phosphorus. Permittees selecting the linear approach to address rates of application must include in the NMP submitted to EPA the following information for each crop, field, and year covered by the NMP, which will be used by EPA to establish site specific permit terms:

1. The maximum application rate (pounds/acre/year of nitrogen and phosphorus) from manure, litter, and process wastewater;

2. The outcome of the field-specific assessment of the potential for nitrogen and phosphorus transport from each field. The potential for nitrogen and phosphorus transport shall be determined using the June, 2007 Idaho NRCS, Conservation Practice Standard Code 590. The CAFO must specify any conservation practices used in calculating the risk rating;

3. The crops to be planted or any other uses of a field such as pasture or fallow fields;

4. The realistic annual yield goal for each crop or use identified for each field;

5. The nitrogen and phosphorus recommendations, including the source of the recommendation, for each crop or use identified for each field;

6. Credits for all residual nitrogen in each field that will be plant-available;

7. Consideration of multi-year phosphorus application. For any field where nutrients are applied at a rate based on the crop phosphorus requirement, the NMP must account for single-year nutrient applications that supply more than the crop's annual phosphorus requirement;

8. Accounting for all other additions of plant available nitrogen and phosphorus (i.e., from sources other than manure, litter, or process wastewater or credits for residual nitrogen);

9. The form and source of manure, litter, and process wastewater to be land-applied;

10. The timing and method of land application. The NMP also must include storage capacities needed to ensure adequate storage that accommodates the timing indicated;

11. The methodology that will be used to account for the amount of nitrogen and phosphorus in the manure, litter, and wastewater to be applied; and

12. Any other factors necessary to determine the maximum application rate identified in accordance with the Linear Approach.

(B) Large CAFOs using the Linear Approach must calculate the maximum amount of manure, litter, and process wastewater to be land applied at least once each year using the results of the most recent representative manure, litter, and process wastewater tests of nitrogen and phosphorus. Such representative tests must be taken within 12 months prior to the date of land application.

ii. Narrative Rate Approach

(A) The Narrative Rate Approach expresses a narrative rate of application that results in the amount, in tons or gallons, of manure, litter, and process wastewater to be land applied. Permittees selecting the narrative rate approach to address rates of application must include in the NMP submitted to EPA the following information for each crop, field, and year covered by the NMP, which will be used by EPA to establish site specific permit terms:

1. The maximum amounts of nitrogen and phosphorus that will be derived from all sources of nutrients (pounds/acre for each crop and field);

2. The outcome of the field-specific assessment of the potential for nitrogen and phosphorus transport from each field. The potential for nitrogen and phosphorus transport shall be determined using the June, 2007 Idaho NRCS, Conservation Practice Standard Code 590 (see Appendix C). The CAFO must specify any conservation practices used in calculating the risk rating.

3. The crops to be planted in each field or any other uses of a field such as pasture or fallow fields, including alternative crops if applicable. Any alternative crops included in the NMP must be listed by field, in addition to the crops identified in the planned crop rotation for that field;

4. The realistic annual yield goal for each crop or use identified for each field for each year, including any alternative crops identified;

5. The nitrogen and phosphorus recommendations, including the source of the recommendation, for each crop or use identified for each field, including any alternative crops identified;

6. The methodology (including formulas, sources of data, protocols for making determination, etc.) and actual data that will be used to account for: (1) the results of soil tests required by Parts II.B.1.f and III.A.3.g, (2) credits for all nitrogen in the field that will be plant-available, (3) the amount of nitrogen and phosphorus in the manure, litter, and process wastewater to be applied, (4) consideration of multi-year phosphorus application (for any field where nutrients are applied at a rate based on the crop phosphorus requirement, the methodology must account for

single-year nutrient applications that supply more than the crop's annual phosphorus requirement), (5) accounting for all other additions of plant available nitrogen and phosphorus to the field (i.e., from sources other than manure, litter, or process wastewater or credits for residual nitrogen), (6) the timing and method of land application, and (7) volatilization of nitrogen and mineralization of organic nitrogen.

7. Any other factors necessary to determine the amounts of nitrogen and phosphorus to be applied in accordance with the Narrative Rate Approach.

(B) NMPs using the Narrative Rate Approach must also include the following projections, which will not be used by EPA in establishing site specific permit terms:

1. Planned crop rotations for each field for the period of permit coverage;

2. Projected amount of manure, litter, or process wastewater to be applied;

3. Projected credits for all nitrogen in the field that will be plant-available;

4. Consideration of multi-year phosphorus application;

5. Accounting for other additions of plant-available nitrogen and phosphorus to the field; and

6. The predicted form, source, and method of application of manure, litter, and process wastewater for each crop.

iii. Identify and maintain all records necessary to document the development and implementation of the NMP and compliance with the permit.

j. Include a legible site map of the production area (including, at a minimum, the animal confinement area, the manure storage area, the raw materials storage area, and the waste containment area), and the land application area. The map must also include flow direction, an outline of drainage areas to process wastewater retention or control structures, structural controls, and surface water bodies.

4. The NMP shall be signed by the owner/operator or other signatory authority in accordance with Part V.C.5 (Signatory Requirements) of this permit.

5. A current copy of the NMP shall be kept on site at the permitted facility in accordance with Part V.A.7 of this permit and provided to the permitting authority upon request.

6. Changes to the NMP

a. When a CAFO owner or operator covered by this permit makes changes to the CAFO's NMP previously submitted to EPA, the CAFO owner or operator must provide EPA with the most

current version of the CAFO's NMP and identify changes from the previous version, with the exception of annual calculations of application rates for manure, litter, and process wastewater as required in Parts III.A.3.i.(B) (for the Linear Approach) and III.A.3.i.ii.(A) (for the Narrative Rate Approach), which are not required to be submitted to EPA.

b. When changes to a NMP are submitted to EPA, EPA will review the revised NMP to ensure that it meets the requirements of Parts II.B.1 and III.A.3. If EPA determines that the changes to the NMP necessitate revision to the terms of the NMP incorporated into the permit issued to the CAFO, EPA must determine whether such changes are substantial. Substantial changes to the terms of a NMP incorporated as terms and conditions of a permit include, but are not limited to:

i. Addition of new land application areas not previously included in the CAFO's NMP, except that if the added land application area is covered by the terms of a NMP incorporated into an existing NPDES permit and the permittee complies with such terms when applying manure, litter, and process wastewater to the added land;

ii. For NMPs using the Linear Approach, changes to the field-specific maximum annual rates of land application (pounds of N and P from manure, litter, and process wastewater).

iii. For NMPs using the Narrative Rate Approach, changes to the maximum amounts of nitrogen and phosphorus derived from all sources for each crop;

iv. Addition of any crop or other uses not included in the terms of the CAFO's NMP; and

v. Changes to site specific components of the CAFO's NMP, where such changes are likely to increase the risk of nitrogen and phosphorus transport to waters of the U.S.

c. If EPA determines that the changes to the terms of the NMP are not substantial, EPA will include the revised NMP in the permit record, revise the terms of the permit based on the site specific NMP, and notify the permittee and the public of any changes to the terms of the permit based on revisions to the NMP.

d. If EPA determines that the changes to the terms of the NMP are substantial, EPA will notify the public, make the proposed changes and the information submitted by the CAFO owner or operator available for public review and comment, and respond to all significant comments received during the comment period. The process for public comments, hearing requests and the hearing process if a hearing is held will follow the procedures set forth in 40 CFR 124.11 through 124.13. EPA may require the permittee to further revise the NMP, if necessary. Once EPA incorporates the revised terms of the NMP into the permit, EPA will notify the permittee of the revised terms and conditions of the permit. EPA will provide an opportunity for public comment as specified in Part III.A.2.c in this permit

7. Requirements associated with NMP implementation

In accordance with Part III.A.3 of this permit, the permittee must:

a. Have adequate storage of manure, litter, and process wastewater, including procedures to ensure proper operation and maintenance of the storage facilities.

b. Properly manage mortalities.

c. Divert clean water, as appropriate from the production area.

d. Prevent direct contact of confined animals with waters of the United States.

e. Dispose of chemicals and other contaminants handled on-site in accordance with labeled disposal instructions.

f. Implement site specific conservation practices, including required buffers or equivalent practices.

g. Take representative samples of manure, litter, and process wastewater and analyze those samples for nutrient content, including nitrogen and phosphorus, at least annually, in accordance with the protocols established in the NMP under Part III.A.3.g. Manure sampling and analysis shall be conducted prior to land application and shall be sampled in accordance with the June, 2007 Idaho NRCS, Conservation Practice Standard Code 590 (see Appendix C). The sample shall be sent for analysis as soon after collection as practical and, where necessary, specific preservation procedures shall be utilized to prevent the degradation of the sample.

h. Representative samples of soil for all fields under the control of the CAFO operator where manure and wastewater may be applied must be collected and analyze those samples for phosphorus content at least once annually, in accordance with the protocols established in the NMP under Part III.A.3.g. Representative samples shall be collected from each field included in the NMP. Each sample area should consist of only one general soil type or condition. If a field varies in slope, color, drainage or texture, and if those areas can be fertilized separately, collect and analyze a separate sample for each area. Avoid sampling in old fence rows, dead furrows, low spots, feeding areas, and other areas that might not provide representative results. Soil samples shall not be taken when the soil is wet or frozen or shortly after applying lime or fertilizer. The permittee shall collect at least 10 soil cores for small areas and up to 30 cores for larger fields. The permittee shall take the soil cores randomly throughout the sampling area and combine the cores into a single sample. An individual sample should represent no more than 20 acres except when soils, past management, and cropping history are uniform.

   In all cases the sampling frequency for manure, litter, process wastewater and soil shall be consistent with the June, 2007 Idaho NRCS, Conservation Practice Standard Code 590 (see Appendix C).

i. Properly land apply manure, litter, or process waste water in accordance with the CAFOs site specific NMP.

j. Maintain site specific records to document the implementation and management of the NMP.

k. CAFOs that use the Narrative Rate Approach must calculate maximum amounts of manure, litter, and process wastewater to be land applied at least once each year using the methodology

specified in the NMP pursuant to Part III.A.3.i.ii(A) before land applying manure, litter, and process wastewater. Such calculations must rely on the following data:

i. A field-specific determination of soil levels of nitrogen and phosphorus. For nitrogen, the determination must include a concurrent determination of nitrogen that will be plant available. For phosphorus, the determination must include the results of the most recent soil test conducted as required in Parts II.B.1.f and III.A.3.g.

ii. The results of the most recent representative manure, litter, and process wastewater tests for nitrogen and phosphorus taken within 12 months prior to the date of land application, as required in Parts II.B.1.f and III.A.3.g, in order to determine the amount of nitrogen and phosphorus in the manure, litter, and process wastewater to be applied.

8. Certified Specialists to Develop NMPs

Owners/operators of CAFOs shall use a certified specialist to develop, modify, review, and/or approve the NMP required by this permit. A certified specialist is an individual who has demonstrated the capacity to develop Comprehensive Nutrient Management Plans (CNMPs) or NMPs in accordance with applicable USDA-NRCS standards, State standards, and when applicable, meets EPA CAFO effluent guidelines, NMP requirements, and NPDES permit requirements. The certified specialist must be certified by the Idaho USDA-NRCS, the Idaho State Department of Agriculture, or an equivalent certification program sanctioned by USDA-NRCS. The CAFO owner/operator remains solely responsible for assuring the NMP is properly implemented and complies with all applicable permit conditions.

B. Facility Closure

The following conditions shall apply to the closure of lagoons and other earthen or synthetic lined basins and other manure, litter, or process wastewater storage and handling structures:

1. Closure of Lagoons and Other Surface Impoundments

a. No lagoon or other earthen or synthetic lined basin shall be permanently abandoned.

b. Lagoons and other earthen or synthetic lined basins shall be maintained at all times until closed in compliance with this section.

c. All lagoons and other earthen or synthetic lined basins must be properly closed if the permittee ceases operation. In addition, any lagoon or other earthen or synthetic lined basin that is not in use for a period of twelve (12) consecutive months must be properly closed unless the facility is financially viable, intends to resume use of the structure at a later date, and either:

i. Maintains the structure as though it were actively in use, to prevent compromise of structural integrity; or

ii. Removes manure and wastewater to a depth of one foot or less and refills the structure with clean water to preserve the integrity of the synthetic or earthen liner. In either case, the permittee shall notify EPA, in writing, of the action taken, and shall conduct routine inspections, maintenance, and record keeping as though the structure were in use. Prior

to restoration of use of the structure, the permittee shall notify EPA, in writing, and provide the opportunity for inspection. The permittee shall properly handle and dispose of the water used to preserve the integrity synthetic or earthen liner during periods of non-use in accordance with the NMP.

d. All closure of lagoons and other earthen or synthetic lined basins must be consistent with the April, 2006 Idaho NRCS Practice Standard Code 360 (Appendix D). Consistent with this standard the permittee shall remove all waste materials to the maximum extent practicable and dispose of them in accordance with the permittee's NMP, unless otherwise authorized by EPA.

e. Unless otherwise authorized by EPA, completion of closure for lagoons and other earthen or synthetic lined basins shall occur as promptly as practicable after the permittee ceases to operate or, if the permittee has not ceased operations, twelve (12) months from the date on which the use of the structure ceased, unless the lagoons or basins are being maintained for possible future use in accordance with the requirements above.

2. Closure Procedures for Other Manure, Litter, or Process Wastewater Storage and Handling Structure

No other manure, litter, or process wastewater storage and handling structure shall be abandoned. Closure of all such structures shall occur as promptly as practicable after the permittee has ceased to operate, or, if the permittee has not ceased to operate, within twelve (12) months after the date on which the use of the structure ceased. To close a manure, litter, or process wastewater storage and handling structure, the permittee shall remove all manure, litter, or process wastewater and dispose of it in accordance with the permittee's NMP, or document its transfer from the permitted facility in accordance with off-site transfer requirements specified in this permit Part III.C, unless otherwise authorized by EPA.

C. Requirements for the Transfer of Manure, Litter, and Process Wastewater to Other Persons

1. In cases where CAFO-generated manure, litter, or process wastewater is sold or given away the permittee must comply with the following conditions:

a. Maintain records showing the date and amount of manure, litter, and/or process wastewater that leaves the permitted operation;

b. Record the name and address of the recipient;

c. Provide the recipient(s) with representative information on the nutrient content of the manure, litter, and/or process wastewater; and

d. Retain the records on-site, for a period of five years, and submit the records to EPA, upon request.

D. Additional Special Conditions

1. Liner Requirements: The permittee shall document that no direct hydrologic connection exists between contained wastewater and surface waters of the United States. Where the permittee cannot document that

no direct hydrologic connection exists, the ponds, lagoons, and basins of the containment facilities must have a liner which will prevent the potential contamination of surface waters of the United States.

a. Documentation of no direct hydrologic connection. The permittee may document the lack of hydrologic connection by either:

1. Documenting that there will be no significant leakage from the retention structure; or

2. Documenting that any leakage from the retention structure would not migrate to waters of the United States.

For documentation of no significant leakage, in-situ materials must, at a minimum, meet the minimum criteria for hydraulic conductivity and thickness described in 1.b below. Documentation that leakage will not migrate to surface waters must include maps showing ground water flow paths. This documentation must be certified in writing by a NRCS engineer or a Professional Engineer and must include information on the hydraulic conductivity and thickness of the natural materials underlying and forming the walls of the containment structure.

b. Liner construction and maintenance. All liners must be constructed and maintained in accordance with Idaho NRCS specifications. The permittee must maintain the liner to inhibit infiltration of wastewaters. Liners shall be protected from animals by fences or other protective devices. No trees shall be allowed to grow such that the root zone would intrude or compromise the structure of the liner. Any mechanical or structural damage to the liner must be evaluated by a Professional or NRCS Engineer within thirty (30) days of the damage. Documentation of liner maintenance shall be kept with the NMP.

If notified by the State or EPA that the potential exists for the contamination of surface waters or drinking water, the permittee shall have a Professional or NRCS engineer review the maintenance documentation and conduct a site evaluation. The permittee shall install a leak detection system, or monitoring wells, or take other appropriate measures in accordance with that notice. Documentation of compliance with the notification, including data from the monitoring wells, must be kept with the NMP for three (3) years. The first year's monitoring data shall be considered the baseline data for the facility and must be retained on the site for the life of the facility.

2. Retention Structure Dewatering: A schedule must be developed for liquid waste removal from the retention structures. A log indicating weekly inspection of wastewater level in the retention facility, including specific measurement of the wastewater level must be kept. Retention facilities shall be equipped with irrigation, evaporation, or liquid removal systems capable of dewatering the retention facilities. Operators using pits, ponds, or lagoons for storage and treatment of storm water, manure, and process wastewater, including flush water waste handling systems, shall maintain sufficient available storage capacity to contain the runoff and the direct precipitation from a 25-year, 24-hour rainfall event. The operator shall restore the storage capacity as soon as possible after any rainfall event or accumulation of wastes reduces such storage capacity, weather permitting.

Any solids, manure, or other pollutants removed in the course of liquid waste removal from the retention structures shall be disposed of in a manner to prevent pollutants from being discharged to waters of the United States.

3. Spills: Appropriate measures necessary to prevent spills and to cleanup spills of any toxic, hazardous, or other pollutants shall be taken. Procedures for materials handling, storage, and the cleaning up of spills must be specified in the NMP and the necessary equipment to implement clean up shall be made available to facility personnel. All spills and clean-up activities must be documented and all documentation of spills and clean-up must be kept with the NMP.

4. Manure, litter, and process wastewater handling, treatment, and management shall not result in the destruction or adverse modification of the critical habitat of endangered or threatened species, or contribute to the taking of endangered or threatened species of plants, fish, or wildlife. The operator shall notify State and Federal wildlife agencies, ISDA, DEQ, and EPA within 48 hours in the event of any significant fish, wildlife, migratory bird, and endangered species kill or die-off on or near retention facilities, or in fields where waste has been applied.

5. Manure, litter, and process wastewater handling, treatment, and management shall not create an environmental or public health hazard and shall not result in the contamination of drinking water in exceedance of Idaho Rules for Public Drinking Water Systems.

6. Employee Training: Employees responsible for permit compliance must be regularly trained or informed of any information pertinent to the proper operation and maintenance of the facility and waste disposal. Training shall include topics such as land application of wastes, proper operation and maintenance of the facility, good housekeeping and material management practices, necessary record-keeping requirements, and spill response and clean up. The permittee is responsible for determining the appropriate training frequency for different levels of personnel and the NMP shall identify dates for such training.

IV. INSPECTION, MONITORING, RECORDKEEPING, AND REPORTING

A. Inspection, Monitoring, and Recordkeeping

The permittee shall inspect, monitor, and record the results of such inspection and monitoring in accordance with Table IV–A:

Table IV-A NPDES CAFO Permit Record Keeping Requirements		
Parameter	**Units**	**Frequency**
Permit and NMP ***(Note: Required by the NPDES CAFO Regulation – applicable to all CAFOs)***		
The CAFO must maintain on-site a copy of the current NPDES permit, including the permit authorization notice.	N/A	Maintain at all times
The CAFO must maintain on-site a current site specific NMP that reflects existing operational characteristics. The operation must also maintain on-site all necessary records to document that the NMP is being properly implemented with respect to manure and wastewater generation, storage and handling, land application, and all other minimum practices described in 40 CFR 122.42(e).	N/A	Maintain at all times
Soil and Manure/Wastewater Nutrient Analysis ***(Note: Required by the CAFO ELG – applicable to Large CAFOs)***		

Table IV-A NPDES CAFO Permit Record Keeping Requirements		
Parameter	**Units**	**Frequency**
Analysis of manure, litter, and process wastewater to determine nitrogen and phosphorus content.[1]	ppm Pounds/ton	At least annually after initial sampling
Analysis of soil in all fields where land application activities are conducted to determine phosphorus content.[1]	ppm	At least once every 5 years after initial sampling
Operation and Maintenance ***(Note: Required by the CAFO ELG – applicable to Large CAFOs)***		
Visual inspection of all storm water diversion devices, runoff diversion structures, and devices channeling contaminated storm water to wastewater and manure storage and containment structures.	N/A	Weekly
Visual inspection of all water lines	N/A	Daily[2]
Visual inspection of manure, litter, and process wastewater impoundments, including documentation of depth of manure and process wastewater in all liquid impoundments	Feet	Weekly
Documentation of all corrective actions taken. Deficiencies not corrected within 30 days must be accompanied by an explanation of the factors preventing immediate correction.	N/A	As necessary
Documentation of animal mortality handling practices	N/A	As necessary
Design documentation for all manure, litter, and wastewater storage structures including the following information: • Volume for solids accumulation • Design treatment volume • Total design storage volume[3] • Days of storage capacity	 Cubic yards/gallons Cubic yards/gallons Cubic yards/gallons Days	 Once in the permit term unless revised
Documentation of all overflows from all manure and wastewater storage structures including: ***(Note: Required by the NPDES Regulation – applicable to all CAFOs)*** • Date and time of overflow • Estimated volume of overflow • Analysis of overflow (as required by the Permitting Authority)	 Month/day/year Total gallons ppm	 Per event Per event Per event
Land Application ***(Note: Required by the CAFO ELG – applicable to Large CAFOs)***		
For each application event where manure, litter, or process wastewater is applied, documentation of the following by field: • Date of application • Method of application • Weather conditions at the time of application and for 24 hours prior to and following application • Total amount of nitrogen and phosphorus applied[4]	 Month/day/year N/A N/A Pounds/acre	 Daily Daily Daily Daily
Documentation of the crop and expected yield for each field	Bushel/acre	Seasonally
Documentation of the actual crop planted and actual yield for each field		

Documentation of test methods and sampling protocols used to sample and analyze manure, litter, and wastewater and soil.	N/A	Once in the permit term unless revised
Documentation of the basis for the application rates used for each field where manure, litter, or wastewater is applied.	N/A	Once in the permit term unless revised
Documentation showing the total nitrogen and phosphorus to be applied to each field including nutrients from the application of manure, litter, and wastewater and other sources	Pounds/acre	Once in the permit term unless revised
Documentation of manure application equipment inspection	N/A	Seasonally
Manure Transfer ***(Note: Required by the NPDES CAFO Regulation – applicable to Large CAFOs)***		
For all manure transfers the CAFO must maintain the following records:		
• Date of transfer	N/A	As necessary
• Name and address of recipient	N/A	As necessary
• Approximate amount of manure, litter, or wastewater transferred	Tons/gallons	As necessary

[1] Refer to the state nutrient management technical standard for the specific analyses to be used.
[2] Visual inspections should take place daily during the course of normal operations. The completion of such inspection should be documented in a manner appropriate to the operation. Some operations may wish to maintain a daily log. Other operations may choose to make a weekly entry, when they update other weekly records that required daily inspections have been completed.
[3] Total design volume includes normal precipitation less evaporation on the surface of the structure for the storage period, normal runoff from the production area for the storage period, 25-year, 24-hour precipitation on the surface of the structure, 25-year, 24-hour runoff from the production area, and residual solids.
[4] Including quantity/volume of manure, litter, or process wastewater applied and the basis for the rate of phosphorus application.

B. Notification of Discharges Resulting from Manure, Litter, and Process Wastewater Storage, Handling, On-site Transport and Application

1. If, for any reason, there is an unauthorized discharge of pollutants to a water of the United States, the permittee is required to make immediate oral notification within 24-hours to the EPA Region 10, NPDES Compliance Unit, Office of Compliance and Enforcement, Seattle, WA at 206-553-1846 and notify EPA, ISDA, and the appropriate DEQ regional office, in writing, within five (5) working days of the discharge of pollutants to a water of the United States from the facility. In addition, the permittee shall keep a copy of the notification submitted to the EPA and ISDA together with the other records required by this permit. The discharge notification shall include the following information:

    a. A description of the discharge and its cause, including a description of the flow path to the receiving water body and an estimate of the flow and volume discharged; and

    b. The period of non-compliance, including exact dates and times, the anticipated time it is expected to continue, and steps taken or planned to reduce, eliminate and prevent recurrence of the discharge.

C. Monitoring Requirements for All Discharges from Retention Structures

In the event of any overflow or other discharge of pollutants from a manure and/or wastewater storage or retention structure, whether or not authorized by this permit, the following actions shall be taken:

1. All discharges shall be sampled and analyzed. Samples must, at a minimum, be analyzed for the following parameters: total nitrogen, nitrate nitrogen, ammonia nitrogen, total phosphorus, E. coli, five-day biochemical oxygen demand (BOD5), total suspended solids, pH, and temperature. The discharge must be analyzed in accordance with approved EPA methods for water analysis listed in 40 CFR Part 136;

2. Record an estimate of the volume of the release and the date and time;

3. Samples shall consist of grab samples collected from the point of overflow or discharge from the waste impoundment or production area. A minimum of one sample shall be collected within 30 minutes of the detection of the overflow or discharge and the sample(s) of the overflow or discharge must be collected and analyzed in accordance with EPA approved methods for water analysis listed in 40 CFR Par 136. The sample(s) collected from the overflow or discharge must be representative of the overflow or discharge;

4. If conditions are not safe for sampling, the permittee must provide documentation of why samples could not be collected and analyzed. For example, the permittee may be unable to collect samples during dangerous weather conditions (such as local flooding, high winds, hurricane, tornadoes, electrical storms, etc.). However, once dangerous conditions have passed, the permittee shall collect a sample from the retention structure (pond or lagoon) from which the discharge occurred; and

5. The analytical results of the representative sample(s) taken from the overflow or discharge must be submitted to EPA Region 10, Office of Compliance and enforcement, within thirty (30) days of the overflow or discharge. Copies of the analytical results shall also be submitted to ISDA and the DEQ state and appropriate regional office at the addresses listed in Part I.E.6 of this permit.

D. Spills / Releases in Excess of Reportable Quantities

1. This permit does not relieve the permittee of the federal reporting requirements of 40 CFR Part 110, 40 CFR Part 117 and 40 CFR Part 302 relating to spills or other releases of oils or hazardous substances.

   Where a release containing a hazardous substance or oil in an amount equal to or in excess of a reportable quantity established under either 40 CFR Part 110, 40 CFR Part 117 or 40 CFR Part 302, occurs during a 24-hour period:

   a. The permittee must provide notice to the National Response Center (NRC) (800–424–8802; in the Washington, DC, metropolitan area call 202–267–2675) in accordance with the requirements of 40 CFR Part 110, 40 CFR Part 117 and 40 CFR Part 302 as soon as site staff have knowledge of the discharge; and

   b. The permittee must, within 7 calendar days of knowledge of the release, provide a description of the release, the circumstances leading to the release, and the date of the release. You must also implement measures to prevent the reoccurrence of such releases and to respond to such releases.

2. Any spill of hazardous materials must be immediately reported to the appropriate DEQ regional office. Spills of petroleum products that exceed 25 gallons or that cause a visible sheen on nearby surface waters should be reported to DEQ within 24-hours. Petroleum product spills of less than 25 gallons or spills that

do not cause a sheen on nearby surface waters shall only be reported to DEQ if cleanup cannot be accomplished within 24-hours.

Outside of regular business hours, qualified spills should be reported to the State Communications Center (1-800-632-8000 or 208-846-7610).

E. Annual Reporting Requirements

1. The permittee shall submit an annual report to EPA by March 1st of each year. The annual report shall be submitted to EPA and a copy sent to ISDA at the addresses listed below.

EPA Region 10: Attn: NPDES Compliance Unit
Office of Compliance and Enforcement
1200 6th Avenue, Suite 900
Mail Stop: OCE-133
Seattle, WA 98101

ISDA: Division of Animal Industries
P.O. Box 790
Boise, ID 83701

2. The annual report must include the following information:
   a. The number and type of animals, whether in open confinement or housed under roof;
   b. Estimated amount of total manure, litter and process wastewater generated by the CAFO in the previous twelve (12) months (tons/gallons);
   c. Estimated amount of total manure, litter and process wastewater transferred to other person by the CAFO in the previous twelve (12) months (tons/gallons);
   d. Total number of acres for land application covered by the NMP:
   e. Total number of acres under control of the CAFO that were used for land application of manure, litter and process wastewater in the previous twelve (12) months;
   f. Summary of all manure, litter and process wastewater discharges from the production area that have occurred in the previous twelve (12) months, including date, time, and approximate volume; and
   g. A statement indicating whether the current version of the CAFO's NMP was developed or approved by a certified nutrient management planner.
   h. Actual crops planted and actual yields for each field for the preceding 12 months.
   i. Results of all samples of manure, litter or process wastewater for nitrogen and phosphorus content for manure, litter and process wastewater that was land applied.
   j. Results of calculations conducted in accordance with Parts III.A.3.i.i (for the Linear Approach) and III.A.3.i.ii (for the Narrative Rate Approach).
   k. Amount of manure, litter, and process wastewater applied to each field during the preceding twelve (12) months.
   l. For CAFOs using the Narrative Rate Approach to address rates of application:
      i. The results of any soil testing for nitrogen and phosphorus conducted during the preceding 12 months.
      ii. The data used in calculations conducted in accordance with Part III.A.3.i.ii.

iii. The amount of any supplemental fertilizer applied during the preceding twelve (12) months.

V. STANDARD PERMIT CONDITIONS

A. General Monitoring, Recording, and Reporting Requirements

1. Representative Sampling

Samples and measurements must be representative of the volume and nature of the monitored discharge.

2. Reporting of Monitoring Results

If applicable, the permittee must submit the legible originals of the monitoring results to the Director, Office of Compliance and Enforcement, with copies to ISDA at the following addresses:

US EPA Region 10
Attn: ICIS Data Entry Team
1200 Sixth Avenue, OCE-133
Seattle, Washington 98101

Idaho State Department of Agriculture
Division of Animal Industries
P.O. Box 790
Boise, ID 83701

3. Monitoring Procedures

Monitoring must be conducted according to test procedures approved under 40 CFR 136, unless other test procedures have been specified in this permit or approved by EPA as an alternate test procedure under 40 CFR 136.5.

4. Additional Monitoring by Permittee

If the permittee monitors any pollutant more frequently than required by this permit, using test procedures approved under 40 CFR 136 or as specified in this permit, the permittee must include the results of this monitoring in the calculation and reporting of the data submitted to EPA.
Upon request by EPA, the permittee must submit results of any other sampling, regardless of the test method used.

5. Records Contents

Records of monitoring information must include:
a. The date, exact place, and time of sampling or measurements;
b. The name(s) of the individual(s) who performed the sampling or measurements;
c. The date(s) analyses were performed;
d. The names of the individual(s) who performed the analyses;
e. The analytical techniques or methods used; and

f. The results of such analyses.

6. Quality Assurance Plan (QAP)

The permittee must develop and implement a quality assurance plan (QAP) for all monitoring required by this permit. Any existing QAPs may be modified for compliance with this section.

a. The QAP must be designed to assist in planning for the collection and analysis of effluent and receiving water samples in support of the permit and in explaining data anomalies when they occur.

b. Throughout all sample collection and analysis activities, the permittee must use the EPA-approved QA/QC and chain-of-custody procedures described in *Requirements for Quality Assurance Project Plans* (EPA/QA/R-5) and *Guidance for Quality Assurance Project Plans* (EPA/QA/G-5). The QAP must be prepared in the format that is specified in these documents.

c. At a minimum, the QAP must include the following:

i. Details on the number of samples, type of sample containers, preservation of samples, holding times, analytical methods, analytical detection and quantitation limits for each target compound, type and number of quality assurance field samples, precision and accuracy requirements, sample preparation requirements, sample shipping methods, and laboratory data delivery requirements.
ii. Map(s) indicating the location of each sampling point.
iii. Qualification and training of personnel.
iv. Name(s), address(es) and telephone number(s) of the laboratories used by or proposed to be used by the permittee.

d. The permittee must amend the QAP whenever there is a modification in sample collection, sample analysis, or other procedure addressed by the QAP.

e. Copies of the QAP must be kept on site and made available to EPA, ISDA, and/or DEQ upon request.

7. Retention of Records

The permittee must retain records of all monitoring information, including, all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, a copy of the NPDES permit, and records of all data used to complete the application for this permit, for a period of at least five years from the date of the sample, measurement, report or application. This period may be extended by request of EPA or insert State/Tribal agency at any time.

8. Other Noncompliance Reporting

The permittee must report all instances of noncompliance, not required to be reported within 24 hours, at the time that monitoring reports for Part V.A.2 (“Reporting of Monitoring Results”) are submitted. The reports must contain the information listed in Part IV.B of this permit (“Notification of Discharges

Resulting from Manure, Litter, and Process Wastewater Storage, Handling, On-site Transport and Application").

9. Changes in Discharge of Toxic Pollutant

The permittee must notify the Director of the Office of Water and Watersheds and DEQ as soon as it knows, or has reason to believe:

a. That any activity has occurred or will occur that would result in the discharge, on a routine or frequent basis, of any toxic pollutant that is not limited in the permit, if that discharge may reasonably be expected to exceed the highest of the following "notification levels":

i. One hundred micrograms per liter (100 ug/l);
ii. Two hundred micrograms per liter (200 ug/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 ug/l) for 2,4-dinitrophenol and for 2-methyl-4, 6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony;
iii. Five (5) times the maximum concentration value reported for that pollutant in the permit application in accordance with 40 CFR 122.21(g)(7); or
ii. The level established by EPA in accordance with 40 CFR 122.44(f).

b. That any activity has occurred or will occur that would result in any discharge, on a non-routine or infrequent basis, of any toxic pollutant that is not limited in the permit, if that discharge may reasonably be expected to exceed the highest of the following "notification levels":

i. Five hundred micrograms per liter (500 ug/l);
ii. One milligram per liter (1 mg/l) for antimony;
iii. Ten (10) times the maximum concentration value reported for that pollutant in the permit application in accordance with 40 CFR 122.21(g)(7); or
iv. The level established by EPA in accordance with 40 CFR 122.44(f).

c. The permittee must submit the notification to Office of Water and Watersheds at the following address:

US EPA Region 10
Attn: NPDES Permits Unit Manager
1200 Sixth Avenue, OWW-130
Seattle, Washington 98101

B. Compliance Responsibilities

1. Duty to Comply

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Act and is grounds for enforcement action, for permit termination, revocation and reissuance, or modification, or for denial of a permit renewal application.

2. Penalties for Violations of Permit Conditions

a. Civil and Administrative Penalties. Pursuant to 40 CFR Part 19 and the Act, any person who violates section 301, 302, 306, 307, 308, 318 or 405 of the Act, or any permit condition or limitation implementing any such sections in a permit issued under section 402, or any requirement imposed in a pretreatment program approved under sections 402(a)(3) or 402(b)(8) of the Act, is subject to a civil penalty not to exceed the maximum amounts authorized by Section 309(d) of the Act and the Federal Civil Penalties Inflation Adjustment Act (28 U.S.C. § 2461 note) as amended by the Debt Collection Improvement Act (31 U.S.C. § 3701 note) (currently $37,500 per day for each violation).

b. Administrative Penalties. Any person may be assessed an administrative penalty by the Administrator for violating section 301, 302, 306, 307, 308, 318 or 405 of this Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this Act. Pursuant to 40 CFR 19 and the Act, administrative penalties for Class I violations are not to exceed the maximum amounts authorized by Section 309(g)(2)(A) of the Act and the Federal Civil Penalties Inflation Adjustment Act (28 U.S.C. § 2461 note) as amended by the Debt Collection Improvement Act (31 U.S.C. § 3701 note) (currently $16,000 per violation, with the maximum amount of any Class I penalty assessed not to exceed $37,500). Pursuant to 40 CFR 19 and the Act, penalties for Class II violations are not to exceed the maximum amounts authorized by Section 309(g)(2)(B) of the Act and the Federal Civil Penalties Inflation Adjustment Act (28 U.S.C. § 2461 note) as amended by the Debt Collection Improvement Act (31 U.S.C. § 3701 note) (currently $16,000 per day for each day during which the violation continues, with the maximum amount of any Class II penalty not to exceed $177,500).

c. Criminal Penalties:

i. Negligent Violations. The Act provides that any person who negligently violates sections 301, 302, 306, 307, 308, 318, or 405 of the Act, or any condition or limitation implementing any of such sections in a permit issued under section 402 of the Act, or any requirement imposed in a pretreatment program approved under section 402(a)(3) or 402(b)(8) of the Act, is subject to criminal penalties of $2,500 to $25,000 per day of violation, or imprisonment of not more than 1 year, or both. In the case of a second or subsequent conviction for a negligent violation, a person shall be subject to criminal penalties of not more than $50,000 per day of violation, or by imprisonment of not more than 2 years, or both.

ii. Knowing Violations. Any person who knowingly violates such sections, or such conditions or limitations is subject to criminal penalties of $5,000 to $50,000 per day of violation, or imprisonment for not more than 3 years, or both. In the case of a second or subsequent conviction for a knowing violation, a person shall be subject to criminal penalties of not more than $100,000 per day of violation, or imprisonment of not more than 6 years, or both.

iii. Knowing Endangerment. Any person who knowingly violates section 301, 302, 303, 306, 307, 308, 318 or 405 of the Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of the Act, and who knows at that time that he thereby places another person in imminent danger of death or serious bodily injury, shall, upon conviction, be subject to a fine of not more than $250,000 or imprisonment of not more than 15 years, or both. In the case of a second or subsequent conviction for a knowing endangerment violation, a person shall be subject to a fine of not more than $500,000 or by imprisonment of not more than 30 years, or both. An

organization, as defined in section 309(c)(3)(B)(iii) of the Act, shall, upon conviction of violating the imminent danger provision, be subject to a fine of not more than $1,000,000 and can be fined up to $2,000,000 for second or subsequent convictions.

iv. False Statements. The Act provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than 2 years, or both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment is a fine of not more than $20,000 per day of violation, or by imprisonment of not more than 4 years, or both. The Act further provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or non-compliance shall, upon conviction, be punished by a fine of not more than $10,000 per violation, or by imprisonment for not more than 6 months per violation, or by both.

3. Need to Halt or Reduce Activity not a Defense

It shall not be a defense for the permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with this permit.

4. Duty to Mitigate

The permittee must take all reasonable steps to minimize or prevent any discharge in violation of this permit that has a reasonable likelihood of adversely affecting human health or the environment.

5. Proper Operation and Maintenance

The permittee must at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by the permittee only when the operation is necessary to achieve compliance with the conditions of the permit.

6. Bypass of Treatment Facilities

a. Bypass not exceeding limitations. The permittee may allow any bypass to occur that does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of paragraphs b and c of this Part.

b. Notice.

i. Anticipated bypass. If the permittee knows in advance of the need for a bypass, it must submit prior written notice, if possible at least 10 days before the date of the bypass.

ii. Unanticipated bypass. The permittee must submit notice of an unanticipated bypass as required under Part IV.B ("Notification of Discharges Resulting from Manure, Litter, and Process Wastewater Storage, Handling, On-site Transport and Application").

c. Prohibition of bypass.

i. Bypass is prohibited, and the Director of the Office of Compliance and Enforcement may take enforcement action against the permittee for a bypass, unless:
(A) The bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
(B) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass that occurred during normal periods of equipment downtime or preventive maintenance; and
(C) The permittee submitted notices as required under paragraph b of this Part.

ii. The Director of the Office of Compliance and Enforcement may approve an anticipated bypass, after considering its adverse effects, if the Director determines that it will meet the three conditions listed above in paragraph c.i. of this Part.

7. Upset Conditions

a. Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitations if the permittee meets the requirements of paragraph b of this part. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

b. Conditions necessary for a demonstration of upset. To establish the affirmative defense of upset, the permittee must demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

i. An upset occurred and that the permittee can identify the cause(s) of the upset;
ii. The permitted facility was at the time being properly operated;
iii. The permittee submitted notice of the upset as required under Part IV.B, "Notification of Discharges Resulting from Manure, Litter, and Process Wastewater Storage, Handling, On-site Transport and Application;" and
iv. The permittee complied with any remedial measures required under Part V.B.4, "Duty to Mitigate."

c. Burden of proof. In any enforcement proceeding, the permittee seeking to establish the occurrence of an upset has the burden of proof.

8. Toxic Pollutants

The permittee must comply with effluent standards or prohibitions established under Section 307(a) of the Act for toxic pollutants within the time provided in the regulations that establish those standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

9. Planned Changes

The permittee must give written notice to the Director of the Office of Water and Watersheds as specified in Part V.A.9.C as soon as possible of any planned physical alterations or additions to the permitted facility whenever:

a. The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source as determined in 40 CFR 122.29(b); or

b. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants that are subject neither to effluent limitations in the permit, nor to notification requirements under Part V.A.9 ("Changes in Discharge of Toxic Substances").

10. Anticipated Noncompliance

The permittee must give written advance notice to the Director of the Office of Compliance of any planned changes in the permitted facility or activity that may result in noncompliance with this permit.

C. General Provisions

1. Permit Actions

This permit may be modified, revoked and reissued, or terminated for cause as specified in 40 CFR 122.62, 122.64, or 124.5. The filing of a request by the permittee for a permit modification, revocation and reissuance, termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

2. Duty to Reapply

If the permittee intends to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for and obtain a new permit. In accordance with 40 CFR 122.21(d), and unless permission for the application to be submitted at a later date has been granted by the Regional Administrator, the permittee must submit a new application at least 180 days before the expiration date of this permit.

3. Duty to Provide Information

The permittee must furnish to EPA, within the time specified in the request, any information that EPA may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee must also furnish to EPA, upon request, copies of records required to be kept by this permit.

4. Other Information

When the permittee becomes aware that it failed to submit any relevant facts in a permit application, or that it submitted incorrect information in a permit application or any report to EPA, it must promptly submit the omitted facts or corrected information in writing.

5. Signatory Requirements

All applications, reports or information submitted to EPA must be signed and certified as follows.

a. All permit applications must be signed as follows:

i. For a corporation: by a responsible corporate officer.
ii. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively.
iii. For a municipality, state, federal, Indian tribe, or other public agency: by either a principal executive officer or ranking elected official.

b. All reports required by the permit and other information requested by EPA must be signed by a person described above or by a duly authorized representative of that person. A person is a duly authorized representative only if:

i. The authorization is made in writing by a person described above;
ii. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company; and
iii. The written authorization is submitted to the Director of the Office of Compliance and Enforcement.

c. Changes to authorization. If an authorization under Part V.C.5.b is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of Part V.C.5.b must be submitted to the Director of the Office of Compliance and Enforcement and insert State/Tribal agency prior to or together with any reports, information, or applications to be signed by an authorized representative.

d. Certification. Any person signing a document under this Part must make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

6. Availability of Reports

In accordance with 40 CFR 2, information submitted to EPA pursuant to this permit may be claimed as confidential by the permittee. In accordance with the Act, permit applications, permits and effluent data are not considered confidential. Any confidentiality claim must be asserted at the time of submission by stamping the words "confidential business information" on each page containing such information. If no claim is made at the time of submission, EPA may make the information available to the public without further notice to the permittee. If a claim is asserted, the information will be treated in accordance with the procedures in 40 CFR 2, Subpart B (Public Information) and 41 Fed. Reg. 36902 through 36924 (September 1, 1976), as amended.

7. Inspection and Entry

The permittee must allow the Director of the Office of Compliance and Enforcement, EPA Region 10; insert State/Tribal agency; or an authorized representative (including an authorized contractor acting as a representative of the Administrator), upon the presentation of credentials and other documents as may be required by law, to:

a. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

b. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

c. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

d. Sample or monitor at reasonable times, for the purpose of assuring permit compliance or as otherwise authorized by the Act, any substances or parameters at any location.

8. Property Rights

The issuance of this permit does not convey any property rights of any sort, or any exclusive privileges, nor does it authorize any injury to persons or property or invasion of other private rights, nor any infringement of federal, tribal, state or local laws or regulations.

9. Transfers

This permit is not transferable to any person except after written notice to the Director of the Office of Water and Watersheds as specified in Part V.A.9.c. The Director may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under the Act. (See 40 CFR 122.61; in some cases, modification or revocation and reissuance is mandatory).

10. State Laws

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable state law or regulation under authority preserved by Section 510 of the Act.

VI. DEFINITIONS

Animal feeding operation (AFO) means a lot or facility (other than an aquatic animal production facility) where the following conditions are met: (i) animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of forty-five (45) days or more in any twelve (12) month period, and (ii) crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.

Application means the EPA standard national forms for seeking coverage under for an NPDES permit, including any additions, revisions or modifications to the forms; or forms approved by EPA for use in "approved States," including any approved modifications or revisions [e.g. for NPDES general permits, a written "notice of intent" pursuant to 40 CFR 122.28; for NPDES individual permits, Form 1 and 2B pursuant to 40 CFR 122.1(d)].

Concentrated animal feeding operation (CAFO) means an AFO which is defined as a Large CAFO or Medium CAFO by 40 CFR 122.23 (4) and (6), or that is designated as a CAFO.

Fecal coliform means the bacterial count (Parameter 1) at 40 CFR 136.3 in Table 1A, which also cites the approved methods of analysis.

Grab sample means a sample which is taken from a waste stream on a one-time basis without consideration of the flow rate of the waste stream and without consideration of time.

Land application means the application of manure, litter, or process wastewater onto or incorporated into the soil.

Land application area means land under the control of a CAFO owner or operator, whether it is owned, rented, or leased, to which manure, litter, or process wastewater from the production area is or may be applied.

Large CAFO means an AFO that stables or confines as many as or more than the numbers of animals specified in any of the following categories: (i) 700 mature dairy cattle, whether milked or dry; (ii)1,000 veal calves; (iii)1,000 cattle other than mature dairy cows or veal calves. Cattle includes but is not limited to heifers, steers, bulls and cow/calf pairs; (iv) 2,500 swine each weighing 55 pounds or more; (v)10,000 swine each weighing less than 55 pounds; (vi) 500 horses; (vii) 10,000 sheep or lambs; (viii) 55,000 turkeys; (ix) 30,000 laying hens or broilers, if the AFO uses a liquid manure handling system; (x)125,000 chickens (other than laying hens), if the AFO uses other than a liquid manure handling system; (xi) 82,000 laying hens, if the AFO uses other than a liquid manure handling system; (xii) 30,000 ducks (if the AFO uses other than a liquid manure handling system); or (xiii) 5,000 ducks (if the AFO uses a liquid manure handling system).

Liquid manure handling system means a system that collects and transports or moves waste material with the use of water, such as in washing of pens and flushing of confinement facilities. This would include the use of water impoundments for manure and/or wastewater treatment.

Manure is defined to include manure, litter, bedding, compost and raw materials or other materials commingled with manure or set aside for land application or other use.

Medium CAFO means any AFO that stables or confines as many or more than the numbers of animals specified in any of the following categories: (i) 200 to 699 mature dairy cattle, whether milked or dry cows; (ii) 300 to 999

veal calves; (iii) 300 to 999 cattle other than mature dairy cows or veal calves. Cattle includes but is not limited to heifers, steers, bulls and cow/calf pairs; (iv) 750 to 2,499 swine each weighing 55 pounds or more; (v) 3,000 to 9,999 swine each weighing less than 55 pounds; (vi)150 to 499 horses, (vii) 3,000 to 9,999 sheep or lambs, (viii) 16,500 to 54,999 turkeys, (ix) 9,000 to 29,999 laying hens or broilers, if the AFO uses a liquid manure handling system; (x) 37,500 to 124,999 chickens (other than laying hens), if the AFO uses other than a liquid manure handling system; (xi) 25,000 to 81,999 laying hens, if the AFO uses other than a liquid manure handling system; (xii) 10,000 to 29,999 ducks (if the AFO uses other than a liquid manure handling system); or (xiii) 1,500 to 4,999 ducks (if the AFO uses a liquid manure handling system) **and** either one of the following conditions are met (a) pollutants are discharged into waters of the United States through a man-made ditch, flushing system, or other similar man-made device; or (b) pollutants are discharged directly into waters of the United States which originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

Notice of Intent (NOI) is a form submitted by the owner/operator applying for coverage under a general permit. It requires the applicant to submit the information necessary for adequate program implementation, including, at a minimum, the legal name and address of the owner or operator, the facility name and address, type of facility or discharges, and the receiving stream(s). [(40 CFR §128.28(b)(2)(ii)].

Process wastewater means water directly or indirectly used in the operation of the CAFO for any or all of the following: spillage or overflow from animal or poultry watering systems; washing, cleaning, or flushing pens, barns, manure pits, or other AFO facilities; direct contact swimming, washing, or spray cooling of animals; or dust control. Process wastewater also includes any water which comes into contact with or is a constituent of raw materials, products, or byproducts including manure, litter, feed, milk, eggs, or bedding.

Production area means that part of an AFO that includes the animal confinement area, the manure storage area, the raw materials storage area, and the waste containment areas. The animal containment area includes but is not limited to open lots, housed lots, feedlots, confinement houses, stall barns, free stall barns, milkrooms, milking centers, cowyards, barnyards, medication pens, walkers, animal walkways, and stables. The manure storage area includes but is not limited to lagoons, runoff ponds, storage sheds, stockpiles, under house or pit storages, liquid impoundments, static piles, and composting piles. The raw materials storage area includes but is not limited to feed silos, silage bunkers, and bedding materials. The waste containment area includes but is not limited to settling basins, and areas within berms and diversions which separate uncontaminated storm water. Also included in the definition of production area is any egg washing or egg processing facility, and any area used in the storage, handling, treatment, or disposal of mortalities.

Small CAFO means an AFO that is designated as a CAFO and is not a Medium CAFO.

Setback means a specified distance from waters of the United States or potential conduits to waters of the United States where manure, litter, and process wastewater may not be land applied. Examples of conduits to surface waters include but are not limited to: Open tile line intake structures, sinkholes, and agricultural well heads.

The Act means Federal Water Pollution Control Act as amended, also known as the Clean Water Act as amended, found at 33 USC 1251 et seq.

Vegetated buffer means a narrow, permanent strip of dense perennial vegetation established parallel to the contours of and perpendicular to the dominant slope of the field for the purposes of slowing water runoff, enhancing water infiltration, and minimizing the risk of any potential nutrients or pollutants from leaving the field and reaching waters of the United States.

Waters of the United States means: (1) all waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters that are subject to the ebb and flow of the tide; (2) all interstate waters, including interstate wetlands; (3) all other waters such as intrastate lakes, rivers, and streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters: (a) which are or could be used by interstate or foreign travelers for recreational or other purposes; from which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or, which are or could be used for industrial purposes by industries in interstate commerce; (4) all impoundments of waters otherwise defined as waters of the United States; (5) tributaries of waters identified in (1) through (4) of this definition; (6) the territorial sea; and (7) wetlands adjacent to waters (other than waters that are themselves wetlands) identified in items (1) through (6) of this definition.